

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D C 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)
)
Revision of the Commission's Rules to Ensure)
Compatibility with Enhanced 911 Emergency)
Calling Systems)
)
MobileTel, LLC)
Petition for Waiver of Section 20.18)
of the Commission's Rules)

CC Docket No 94-102

To: Chief, Wireless Telecommunications Bureau

PETITION FOR WAIVER

MobileTel, LLC ("MobileTel"), pursuant to Sections 1.3 and 1.925 of the Commission's Rules,¹ hereby requests temporary waiver of the Phase II enhanced 911 ("E911") obligations set forth in Section 20.18 of the Commission's Rules.² Waiver is warranted due to the fact that the application of the Rule to MobileTel would be unduly burdensome and contrary to the public interest. To further the public interest, MobileTel proposes an alternative and specific deployment schedule based upon representations made by handset-based solution vendors, and commits to submitting quarterly reports to inform the Commission of its progress toward compliance.

¹ 47 C.F.R. §§ 1.3 and 1.925

² 47 C.F.R. § 20.18

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I. Background

MobileTel is a "Tier III" carrier as defined by the Commission's E911 Rules.³ The company provides cellular and PCS service to the rural Louisiana parishes of Lafourche, St Mary and Terrebonne, and to Grand Isle, utilizing analog and TDMA technologies.⁴ On January 9, 2001, MobileTel filed a report with the Commission stating its intention to implement a handset-based Phase II E911 solution. Subsequently, on September 19, 2001, MobileTel amended its report notifying the Commission of its decision to switch to a network-based solution. MobileTel reported that it had been unable to identify any vendor that could provide a handset-based solution for these technologies.⁵

After making a diligent investigation into deploying a network-based solution, MobileTel found that this approach is not economically or technically feasible in its service area. Accordingly, to satisfy the E911 mandate and other competitive and market demands, MobileTel has determined that it must migrate to a CDMA technology that supports a handset-based solution.⁶ MobileTel recently initiated the process of installing the CDMA technology and

³ See *In the Matter of Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Order to Stay, CC Docket No. 94-102 at para. 23 (rel. July 26, 2002) ("Stay Order") (defining Tier III carriers as all wireless carriers with less than 500,000 subscribers).

⁴ MobileTel is licensed to provide cellular service to CMA184, encompassing Lafourche and Terrebonne parishes, and PCS service to a partitioned section of BTA320 that includes Grand Isle, Louisiana. MobileTel's sole owner, SJI, LLC, is licensed to provide PCS service to BTA195, in which the three parishes referenced above are located.

⁵ See Revision to E911 Phase II Implementation Report filed by MobileTel on September 19, 2001 ("Revised Report") at 2.

⁶ The interim report, which is being submitted concurrently with this waiver request, amends the Revised Report to specify selection of a handset-based solution for its CDMA network. MobileTel anticipates that its transition to CDMA will nonetheless result in continued

anticipates that a majority of its customers will have transitioned to this technology by December 31, 2007. Accordingly, the company hereby seeks extension of the Commission's timetable for deployment of a handset-based solution pursuant to the revised schedule set forth herein.

II. Waiver is Warranted

The standard for grant of a waiver of the Commission's Rules is that "in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative."⁷ Waiver is appropriate "if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest."⁸ MobileTel's waiver request meets these standards.

A. Application of the Rule to MobileTel Would be Unduly Burdensome and Contrary to the Public Interest

The Commission's Rules require PCS and cellular licensees to provide E911 access to their customers using either a handset-based or network-based solution. Tier III carriers who implement a handset-based solution must meet the following implementation schedule, even if they have not received a PSAP request: September 1, 2003 - begin selling and activating ALI-capable handsets, November 30, 2003 - ensure that at least 25 percent of all new handsets activated are ALI-capable, May 31, 2004 - ensure that at least 50 percent of all new handsets are ALI-capable, November 30, 2004 - ensure that 100 percent of all new digital handsets activated

utilization of the TDMA/analog portion of its network for some time. Because MobileTel has not received any Phase II requests from PSAPs, its compliance status has not yet been affected.

⁷ 47 C.F.R. § 1.925(b)(3)(ii).

⁸ *Northeast Cellular Telephone v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969)).

are ALI-capable, December 31, 2005 - ensure that 95 percent of their subscribers have ALI-capable handsets.⁹ Because MobileTel, in the midst of a technical change-out, will not be able to fully implement its CDMA technology until the end of 2004, it would be unduly burdensome and contrary to the public interest to require MobileTel to meet this implementation schedule. Accordingly, waiver of these benchmarks should be granted.

MobileTel's service area comprises roughly 3300 square miles of mostly sparsely populated rural territory. For some communities within this service area, MobileTel is the only carrier that provides mobile telephone service. Following MobileTel's notification to the FCC on September 19, 2001, of its decision to implement a network-based Phase II solution, MobileTel worked diligently to identify network-based vendors that could enable MobileTel to implement Phase II in an economically feasible way.¹⁰ The estimated cost of implementing such a solution is between \$1 - \$1.5 million, a cost that is extraordinarily burdensome for a small rural carrier.¹¹ Further, MobileTel has discovered that, due to the configuration of its system, a network-based system cannot be implemented in a manner which guarantees compliance with the Commission's accuracy standards. MobileTel recently learned that a network-based solution would leave approximately fifty percent of the landmass within MobileTel's service area without

⁹ Stay Order at para. 33.

¹⁰ See Revised Report at 2. The state of Louisiana does not provide funding for carriers to deploy E911 Phase II.

¹¹ The only two network-based vendors that have been identified are Grayson Wireless and TruePosition. In its Revised Report, MobileTel cited record evidence to estimate the costs if the company were to select a solution provided by one of these vendors. See Revised Report at 2 & n. 5. After discussions with these vendors, MobileTel has found that the estimated costs did not include all of the components necessary to provide a network-based solution and now estimates the cost to be well over \$1 million. The possible network-based solution offered by Nortel referenced in the Revised Report never materialized. See *Id.* at 2.

Phase II E911 service and would not meet the FCC's accuracy requirements¹² Even if MobileTel were able to locate additional tower sites to assist in meeting the accuracy requirements, obtaining any necessary local and federal governmental approvals and constructing those sites would be extremely difficult, if not impossible.¹³ Construction of the additional towers would add significantly to the already exorbitant cost of deploying a network-based solution, leading to reduction in future expansion of its coverage area, and perhaps even demanding a reduction of its existing coverage area Any reduction in coverage would cause some subscribers in the affected areas to lose basic wireless service, and thus lose all ability to contact emergency service providers except through landline phones, since MobileTel provides service in some areas not served by any other wireless carrier

Given that implementation of a network-based solution is neither economically or technically feasible, the company determined that it had no alternative but to convert its system to a CDMA network The company has selected Nortel as its vendor and issued purchase orders for the CDMA equipment Deployment of CDMA technology is anticipated to begin in the September/October 2003 timeframe, and MobileTel expects to begin marketing CDMA service in Lafourche and Terrebonne parishes by late 2004 A complete overlay of its existing analog/TDMA system should occur in approximately April 2005

¹² See Testimony of James Callahan, President and COO, MobileTel, LLC, Larose, Louisiana, Before The U.S. House of Representatives Subcommittee on Telecommunications and the Internet (June 4, 2003) ("I am not aware of a single rural service provider that has been able to secure a vendor's guarantee that the deployment of its network solution in the carrier's market will meet the FCC's accuracy standards"), Rural Cellular Corporation E911 Implementation Report, CC Docket No 94-102, filed May 1, 2003 ("RCC Quarterly Report") at 1-2 (describing "numerous challenges" to deploying Angle of Arrival antennas in rural markets)

¹³ A large part of MobileTel's service area is either fresh or salt-water marsh. Consequently, attempting to identify suitable tower locations would be difficult at best and could very well lead to insurmountable environmental concerns.

MobileTel reached its decision to convert to a CDMA technology through a process of reasoned decision-making after thoroughly investigating the possibility of implementing a network-based solution on its current analog/TDMA network¹⁴ Having determined its course, the company has proceeded with all due speed to secure the necessary funding, select a vendor and issue purchase orders As noted by one Tier II carrier that serves rural markets, the conversion from a TDMA to a CDMA technology “involves a complicated, multiple step process to clear sufficient spectrum in order to overlay a CDMA system” which takes a significant amount of time¹⁵ Imposition of an artificial timetable would unnecessarily burden the limited staffing resources of the small carrier and jeopardize the provision of the new technology. Accordingly, under these circumstances, the current schedule is overly burdensome and contrary to the underlying purpose of the rules, since the handsets alone will not effect the E911 purpose of implementing location identification unless the network elements are also in place¹⁶

As demonstrated above, requiring MobileTel to sell the handsets on a schedule, which ignores its technology implementation timetable, would be contrary to the public interest. Because the CDMA technology is not compatible with the current analog/TDMA network, customers who purchase the CDMA phones from MobileTel prior to full deployment would have only intermittent CDMA service. Even after the new technology has been implemented in

¹⁴ One Tier II carrier that was not fully aware of the difficulties in implementing a network-based solution in rural areas is now faced with the “daunting decision” as to whether to continue deploying the network-based solution or convert to another technology that supports a handset-based solution See RCC Quarterly Report at 1.

¹⁵ United States Cellular Corporation Quarterly E911 Implementation Report, CC Docket No. 94-102, filed May 1, 2003 at 5 The Tier II carrier estimates that it will take up to four years to convert all of its markets to CDMA *Id*

¹⁶ MobileTel will implement the network components for the handset-based solution within six months after receiving a valid Phase II request as required by the FCC’s Rules

all cell sites, the necessity of testing the system may require down time in which CDMA subscribers' service would be interrupted. Accordingly, requiring sales of CDMA handsets before full system testing and deployment would result in customer dissatisfaction, as well as confusion as to when and where service is available, including access to emergency service providers.

B. Grant of This Waiver Serves the Public Interest

MobileTel has been coordinating with the PSAPs in its service area regarding their plans to begin receiving the Phase II information and does not anticipate that any PSAP will require the Phase II information until after the company has fully implemented its CDMA technology.¹⁷ Accordingly, subscribers will not be harmed by the delay in the sale of ALI-capable handsets since no PSAP would be receiving the Phase II information until the revised implementation schedule is initiated. To implement a handset-based solution in the most efficient and expeditious manner, MobileTel poses the following revised implementation schedule:

- (i) January 1, 2005 - begin selling and activating ALI-capable CDMA handsets,
- (ii) March 31, 2005 - ensure that at least 25% of all new CDMA handsets activated are ALI-capable,
- (iii) September 30, 2005 - ensure that at least 50% of all new CDMA handsets are ALI-capable,

¹⁷ Through these coordinated efforts, MobileTel is aware that no PSAP in areas in which the company currently provides service plans to make any requests for Phase II information for at least a year. One of the PSAPs in MobileTel's service area is constructing a new facility and has informed MobileTel that it does not plan to have the new facility operational for at least a year. Other PSAPs have informed MobileTel that they do not plan to make any requests in the near future. MobileTel hereby commits to continue coordinating with the PSAPs in its service area during the phased-in implementation period.

- (iv) March 31, 2006 - ensure that 100% of all new CDMA handsets activated are ALI-capable
- (v) By December 31, 2007 - ensure that 95% of CDMA subscribers have ALI-capable handsets

This proposed schedule is consistent with the Commission's reasoning when it adopted the phased-in deployment approach for carriers choosing a handset-based solution. The Commission's current benchmarks allow fifteen months to reach 100 percent activation level for new ALI-capable handsets¹⁸ As the Commission has previously found, a transition period of less than four years and three months for carriers to reach full penetration of their customer base with ALI-capable phones is "overly ambitious, in view of consumers that may wish to continue to use their non-ALI capable handsets, even if newer handsets provide location as well as other advanced features"¹⁹ Accordingly, MobileTel's revised deployment schedule proposes to transition at least 95 percent of its CDMA customers to ALI-capable phones within three years from the date it begins to sell the phones and anticipates that within this period of time, many of its TDMA and analog customers will have transitioned to the CDMA ALI-capable handsets²⁰

¹⁸ See Stay Order at para. 33, *In the Matter of Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems: Fourth Memorandum Opinion and Order*, CC Docket No. 94-102 at para. 34 (rel. Sept. 8, 2000) (determining that a fifteen month interval between the benchmark to begin selling the ALI-capable handsets and complying with the 100 percent activation level for new ALI-capable handsets allows carriers to comply "without resulting in unreasonable or unnecessary delay").

¹⁹ See *id.* at para. 36

²⁰ MobileTel anticipates that most of its TDMA customers will have migrated to CDMA technology by the end of 2007, having experienced typical phone-life of two-years for digital customers. The company also anticipates that many of its analog customers will have migrated to CDMA technology by that date since roaming for analog subscribers will likely be significantly curtailed due to the impending sunset of the requirement that cellular carriers provide analog service. Some of MobileTel's analog customers, however, utilize three-watt

During the temporary extension period, MobileTel would submit quarterly progress reports to keep the Commission apprised of progress towards compliance

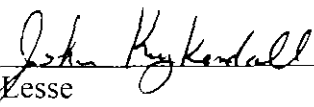
III. Conclusion

After thoroughly considering the implementation of a network-based solution, MobileTel has found that converting its system to a CDMA network, which supports a handset-based solution is the only viable option for compliance with Phase II requirements. To implement this conversion in the most efficient and expeditious manner, MobileTel proposes a revised schedule that does not impose any harm on subscribers. Accordingly, to further the public interest, this instant Petition should be granted.

Respectfully submitted,

MOBILETEL, LLC

By


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John Kuykendall
Its Attorneys

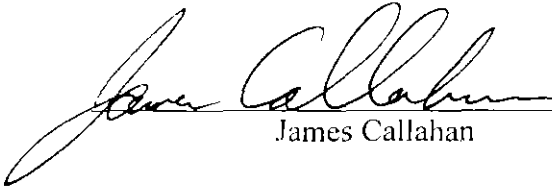
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phones, which undoubtedly will continue to provide better coverage in some rural areas than the lower watt CDMA digital phones. Accordingly, these customers may wish to continue to use their analog phones rather than transition to phones which are ALI-capable. To encourage the FDMA and analog subscribers to transition, MobileTel will engage in an extensive effort to educate these customers regarding the public safety benefits that would be afforded to these customers were they to transition to CDMA ALI-capable phones. Moreover, this effort will include specific information regarding the deficiencies of analog service with respect to emergency services, *i.e.*, that location information will not be available to emergency service providers when consumers utilize analog phones. In this manner, consumers will be fully apprised of the effect of their choice to maintain analog phones, and will therefore be able to make an informed and educated choice regarding available services.

DECLARATION OF JAMES CALLAHAN

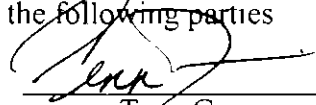
I, James Callahan, President of MobileTel, LLC ("MobileTel"), do hereby declare under penalty of perjury that I have read the foregoing "Petition for Waiver" and that the facts stated therein are true and correct, to the best of my knowledge, information and belief



James Callahan

CERTIFICATE OF SERVICE

I, Terri Granison of Kraskin, Lesse & Cosson, LLC, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that a copy of the foregoing "Petition for Waiver" was served on this 1st day of August 2003, via hand delivery to the following parties



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